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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

DAY OF GENERAL DISCUSSION:
Globalisation and its impact on the enjoyment of economic and social rights

Monday, 11 May 1998

Background paper submitted by the International Labour Organization
THE ILO, STANDARD SETTING AND GLOBALIZATION

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INTRODUCTION

Despite the hopes it raises and promises it makes, the liberalization of international trade might well flounder if its beneficial effects are slow in making themselves felt for workers or if, on the contrary, it is associated in the mind of the general public with an increase in inequalities or precarious conditions. Globalization cannot be left to its own devices. Rather, economic progress resulting from the liberalization of trade should be accompanied by social progress. In order to live up to the expectations placed in it, the ILO should guarantee a greater universality in the application of its fundamental standards and be more selective in its new standards.

The Report submitted to the Conference sets forth a series of specific measures likely to guarantee that the standard-setting action of the ILO will be more relevant in the forthcoming years. All these measures may be taken within the framework of constitutional provisions in force. *Acting in this area is therefore mainly a matter of political will.*

THE UNIVERSAL GUARANTEE OF FUNDAMENTAL RIGHTS AS A PREREQUISITE FOR WORKERS TO BE ABLE TO SHARE THE BENEFITS OF GLOBALIZATION

Although the "debate" over the link between the liberalization of trade and the protection of workers' rights at first took the form of mutual accusations of social dumping and protectionism, it has made significant headway, due to a great extent to the impetus of the ILO and the work of its various groups and committees examining the issue. Today, nobody can claim that developing countries are not entitled to the advantages they derive from their wages and levels of social protection which are comparatively lower.

But if this approach is to be formalized, it presupposes the universal respect of certain fundamental human rights of workers: freedom of association and collective bargaining (Conventions Nos. 87 and 98); the prohibition of forced labour, including forced labour of children (Conventions Nos. 29 and 105); equality of treatment and non-discrimination (Conventions Nos. 100 and 111); minimum age of employment (Convention No. 138). These fundamental rights, which must be acknowledged as such as being universally binding, are of a particular significance in the context of globalization because they are instruments enabling workers to claim their fair share of the economic progress generated by the liberalization of trade.

The Heads of State attending the Social Summit at Copenhagen agreed on the need to promote the fundamental Conventions of the ILO, which has since then been carrying out a successful ratifications campaign. Furthermore, the particular significance of these fundamental rights was officially acknowledged in the Singapore Ministerial Declaration which stressed that the ILO was "the competent body to set and deal with these standards".

The question must now be what particular form this political will, so clearly expressed, should take within the ILO.

Although the ratification of ILO Conventions is voluntary, as in the case of any treaty, not everything is contingent upon the good will of the States. Indeed, the Constitution of the ILO allows it to request States which have **riot** ratified an instrument to give explanations on their attitude. In this respect, the Governing Body has already decided to request each year reports on the reasons for failing to ratify fundamental Conventions. These reports might in the future be used to examine regularly the situation of countries which have not ratified these Conventions.

Another approach - moreover complementary - would be to raise the question of whether, even in the absence of ratification of the relevant Conventions, all member States, *by virtue of their acceptance of the Constitution, and the objectives of the principles o the ILO,* are not bound to a minimum of obligations with respect to fundamental rights. The supervisory machinery for the application of Conventions and principles on freedom of association provides an interesting reference and experience in this area. Under this procedure, governments or workers' and employers' organizations may submit complaints concerning violations of trade

union rights by States, irrespective of whether or not they have ratified the Conventions on freedom of association.

A declaration or any other text enshrining principles adopted by the Conference might help to define the universally acknowledged content of the fundamental rights which should be respected by all Members of the Organization, whether or not they have ratified the corresponding Conventions, and to establish a mechanism to guarantee their promotion. Discussions on this matter have already started in the Governing Body and will continue at the Conference on the basis of the Report.

A system of mutual encouragement to attain social progress: A regular report on social progress in the world?

The guarantee of fundamental rights is a prerequisite for social progress - but it is not enough. As Members of the ILO, the States undertake to try to attain actively social progress in all its forms. Although it is up to the States to act in accordance with their possibilities and preferences, it is important that any efforts they make to turn the benefits of globalization to good account in terms of social progress should be encouraged and evaluated. In this respect, the ILO has the legal means and necessary mandate to set in motion once again the virtuous circle of social progress. It might, in the light of the present discussions, start by gathering and determining a number of basic principles or objectives which should guide the action of States in the area, for example: (i) that a comparative advantage linked to a certain level of wages or social protection is legitimate, if it is a factor of economic growth, provided that it is not artificially maintained or used as a mere means of winning markets; (ii) that there is, in addition to fundamental rights, a minimum programme that each State should try to achieve; (iii) more generally speaking, that all workers, and not only those producing export goods, should be able to have a fair share of the fruits of globalization and that, to attain this objective, a system of tripartite consultation should be envisaged at the national level.

The ILO Constitution and the Declaration of Philadelphia provide the Organization with the means and mandate allowing it to supervise the implementation of these basic principles. By accepting the commitment to work towards the ILO's objectives in good faith, its Members have acknowledged amongst other things the necessary *interdependency* of their efforts - and consequently a reciprocal right to see what other Members are doing. Although introducing a social conditionality would be nonsense

because the opening up of markets constitutes to a great extent a kind of precondition to social progress, it would be just as inconsistent to claim that all partners, in the name of social progress, should have access to all markets without having to give account to anyone on their practices in this field.

On this basis, the Conference could, by means of a text enshrining principles or even a Recommendation, draw up a list of basic principles and establish a follow-up mechanism, for example in the form of a regular report by the Director-General on social progress in the world - followed by a tripartite discussion. In this way, all the Members of the ILO - and more generally national and international public opinion - might have an overall and objective view of the efforts made by each State to turn the economic benefits resulting from the liberalization of trade to good account in terms of social progress.

The mobilization of non-governmental actors to promote social progress

Social progress is no longer the prerogative of States. An increasing number of enterprises are concerned about the social or enviromnental repercussions of their activities; consumers are also increasingly aware of the responsibilities they undertake when they make a certain choice of product or services. This two-pronged converging movement is giving rise to an abundance of charters, codes of practices or "labels", which are supposed to guarantee the respect of various criteria - social and others - in the manufacturing of a particular article.

Although at first sight the objectives of these voluntary arrangements and the ILO might seem to be the same, they risk being arbitrary, singling out a particular right or product or being put to improper use. The main disadvantage of these labels however is that they concern exclusively, through the products they address, workers producing for the international market and certain aspects of fundamental rights. They do not come to grips with the reasons for the situation. To contribute in a more rational and consistent way to the ILO's objectives, it might be envisaged to award an "overall social label" to countries complying with a set of fundamental principles and rights and agreeing to have their practices supervised by an international inspection on the spot which is reliable and legally independent. It would be perfectly feasible to provide

for such a system of inspection under an international labour Convention which, because of its voluntary nature, would allow each State to decide freely whether to give an overall social label to all goods produced on its territory provided that it accepts the obligations inherent in the Convention and agrees to have monitoring on the spot. The ratification of such a Convention would be attractive in terms of real economic interests - and not only from a moral standpoint.

MORE TARGETED STANDARDS FOR A GREATER IMPACT

In its second part, the Report rules out the idea of taking a break from standard setting and advocates strengthening the relevance and efficiency of the standard-setting machinery by making a more judicious choice of subjects and exploiting better the variety and flexibility of the means of action provided for under the ILO Constitution.

A wider and more targeted choice of subjects

In attempting to be more selective in its choice of subjects, the ILO should try to gather more information on the real needs of its constituents by making greater use of its decentralized structures. This information would help the Governing Body constitute a wider, regularly updated *potifolio* of proposals, enabling it to make strategic cnoices which correspond to actual needs. It must then make a stricter choice from among the subjects envisaged for standard setting, taking into account the *added value* that each standard might contribute to the existing instruments. The Report puts forward detailed proposals on the criteria which would help guide better the choice of new standards, for instance the consider~ ations of whether or not a subject lends itself to standard setting, or whether it would make more than an ephemeral contribution, etc.; it suggests an unofficial codification which would give a more coherent summary of existing instruments; it also raises the question of whether it might not be preferable to rely on principles of responsibility rather than accumulate protective provisions. Finally, the Report proposes a number of ways **in** which adjustments could be made to the procedure in force so that the Organization might have an overall view of the possible content of the instruments envisaged before making an irreversible choice.

A greater recourse to Recommendations

The drop-off in the number of ratifications is undoubtedly inevitable and linked not only to globalization but also to other factors, particularly the proliferation of international instruments. This should not, however, hamper the ILO's standard-setting action because Recommendations are an extremely efficient means of action, provided that their full potential is exploited. If Recom*mendations are to regain their rightful place, they should once again be considered as instruments in their own right,- they should then, and this is of paramount importance, be followed up on a regular basis as provided for by the Constitution.* By definition, Recommendations do not impose obligations but they can still have a strong influence on social policy and legislation if they are subject to a real and efficient follow-up, which has not been the case until now.

Overall evaluation mechanism

It is indispensable that the ILO should have a self-correcting mechanism for its standard setting to be able to ascertain the impact and relevance of standards and thus draw lessons for the future. This evaluation would attempt not only to measure the success achieved in fulfilling the specific objective set forth in the instrument, but also to identify any possible indirect or adverse repercussions there might be with respect to other IL0 objectives - for example that of employment. It will be lip to the Governing Body, as the case may be, to choose the appropriate body and procedure for evaluation.